INDEX

	Page
Opinion below	1
Jurisdiction	1
Questions presented	2
Statute and rules involved	2
Statement	2
Summary of argument	14
Argument:	
I. The Committee was acting pursuant to a valid legislative purpose	18
A. The Committee's investigations of Communist activities have been for a valid legislative purpose	19
B. The record shows that this particular investigation had a valid legislative purpose	22
C. The hearing did not constitute a bill of attainder	28
D. The trial court properly excluded the newspaper stories which petitioner offered to prove that the Committee had an invalid purpose	30
II. The Committee's investigation did not violate the First Amendment	32
III. Petitioner, having failed to challenge the pertinency of the questions before the Committee, cannot claim for the first time at his trial that he was not apprised of their pertinency. In any event, petitioner was apprised of their pertinency	33
A. The issue of pertinency was not properly raised before the Committee	33
B. Petitioner was apprised of the pertinency of the questions	36

620763—61——1

Argument—Continued Page

IV. Petitioner was not entitled to dismissal of the indictment or a hearing on the basis of broad allegations that government employees generally are biased 41

V. The indictment was not required to specify the subject under inquiry or to allege that petitioner's refusal to answer was wilful 43

Conclusion 44

Appendix 45

CITATIONS

Cases:

Barenblatt v. *United States*, 360 U.S. 109 ..... 14, 16, 17, 19, 21, 27, 28, 32, 34, 35, 39

Braden v. *United States*, 365 U.S. 431 ..... 14, 20

Cummings v. *Missouri*, 4 Wall. 277 28

Deutch v. *United States*, 367 U.S. 456 ..... 34, 41

De Veau v. *Braisted*, 363 U.S. 144 30

Garland, Ex parte, 4 Wall. 333 28

Flemming v. *Nestor*, 363 U.S. 603 ..... 16, 29

Garner v. *Los Angeles Board*, 341 U.S. 716 28

Liveright v. *United States*, No. 11, this Term 42, 43

Price v. *United States*, No. 12, this Term 42

Russell v. *United States*, No. 8, this Term 42, 43

Shelton v. *United States*, No. 9, this Term 16, 17, 18, 32, 34, 42, 43

Trop v. *Dulles*, 356 U.S. 86 29

United States v. *Lovett*, 328 U.S. 303 28

Watkins v. *United States*, 354 U.S. 178 ..... 14, 20, 21, 27, 28, 30, 31

Whitman v. *United States*, No. 10, this Term 27

Wilkinson v. *United States*, 365 U.S. 399 ..... 14, 20, 22, 32

Constitution and statute:

U.S. Constitution:

Article I, Sec. 3 7

First Amendment 2, 7, 8, 9, 10, 16, 32, 35

Fifth Amendment 8

2 U.S.C. 192 ..... 2, 39

Miscellaneous:

Federal Rules of Criminal Procedure, Rule 7(c) 2, 18, 43

Rule XI, Rules of the House of Representatives 2

In the Supreme Court of the United States

OCTOBER TERM, 1961

No. 128

JOHN T. GOJACK, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the court of appeals (R. 215–232)[1] is reported at 280 F. 2d 678. The opinion of the district court (Tr. 449–451) is not reported.

JURISDICTION

The judgment of the court of appeals was entered on June 18, 1960 (R. 233). On July 12, 1960, Mr. Justice Black extended the time for filing a writ of certiorari to and including August 17, 1960. The petition was filed on August 16, 1960, and certiorari was granted on June 5, 1961 (R. 235; 366 U.S. 943).

[1] "R." refers to the printed record. "Tr." refers to the typewritten transcript of the record.

The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the courts below correctly held that the House Committee on Un-American Activities was acting pursuant to a valid legislative purpose when it questioned petitioner.

2. Whether the Committee violated petitioner's rights under the First Amendment.

3. Whether petitioner can challenge the pertinency of the questions he refused to answer for the first time at his trial, and, if so, whether he was apprised of their pertinency.

4. Whether petitioner, who was indicted by a grand jury composed, in part, of federal employees, was entitled to dismissal of the indictment or a hearing on the basis of general allegations that such jurors were biased and afraid as a result of the government security program.

5. Whether the indictment was invalid because it failed to specify the subject under inquiry and did not allege that petitioner's refusal to answer was wilful.

STATUTE AND RULES INVOLVED

The pertinent portions of 2 U.S.C. 192, Rule XI of the Rules of the House of Representatives, and Rule 7(c) of the Federal Rules of Criminal Procedure are set forth at pages 5–6 of petitioner's brief.

STATEMENT

Petitioner was indicted on nine counts, each of which charged unlawful refusal to answer a different

question put to him by a subcommittee of the Committee on Un-American Activities of the House of Representatives (R. 1–3). Having waived a jury trial, petitioner was convicted by the court on six of the nine counts (R. 217),[1] and sentenced to nine months' imprisonment and a fine of two hundred dollars. On appeal, the conviction was affirmed (R. 233).

The pertinent facts may be summarized as follows:

The Committee had been engaged intermittently in investigating the Communist Party activities of officials of the United Electrical, Radio and Machine Workers of America (the "U.E.") from August 1949 until February 1955 when petitioner appeared before the Committee (R. 26–27). It had received sworn testimony in 1951 from one Decavitch, a long-time district president of the U.E. and a former Communist, that the Communist Party had infiltrated the union to the extent that of its important officials "99.9 per cent" were "pure Communist Party members" (R. 27, 29). In July 1953, a former Communist, Jack Davis, who had been an organizer for the U.E., testified that all of the organizers for the U.E. who attended meetings were members of the Communist Party (R. 29–30). Before petitioner was subpoenaed, the Committee had information that he was a vice-president of the national union and the president of District 9 (R. 30–31).

On February 9, 1955, the Committee announced that hearings would begin in Fort Wayne, Indiana,

[1] Count one was dismissed when the United States Attorney was obliged to elect. On counts two and five, petitioner was found not guilty because the subcommittee failed to disallow his objection and did not demand an answer (R. 215–217).

on February 21, 1955 (R. 85, 89). A newspaper account mentioned petitioner, who was a resident of Fort Wayne, as a prospective witness (R. 136). On February 10, Congressman Walter, the Chairman of the Committee, received a telegram from petitioner protesting on behalf of the Union the scheduling of the hearings for February 21, 1955, in view of a National Labor Relations Board election at the Magnavox plant on February 24, 1955, involving the U.E. and rival unions (Gov. Ex. 9; R. 86–88). The telegram claimed that the hearing would be a "flagrant use of a Congressional Committee for union-busting"; stated that in view of the criminal conviction of a former Committee Chairman "for bribery [*sic*], we have every right to ask whether the Magnavox Company is paying for this Congressional assistance in union busting"; argued that the Union had "the right to know which type Matusow witness Represenative Walters [*sic*] and the Magnovox Company would use"; characterized a previous Committee investigation as a "witch-hunt" in which Congressman Walter made a "lying claim" against the Union; and charged that the Committee was run by "publicity-mad zealots" who "tarnish[ed]" the Congress with their "stench" (R. 87–88).

On February 14, 1955, George Goldstein, U.E.'s Washington representative, sought a continuance of the hearing (R. 68, 76). Because of the nature of the telegram sent by petitioner four days earlier, Chairman Walter decided to hear Mr. Goldstein only at a reported session (R. 79).[3] At the interview the

[3] The transcript of the interview was read into the record below (R. 73–79).

Chairman told Mr. Goldstein that the Committee first knew of the N.L.R.B. election when the Chairman received petitioner's telegram (R. 77). The following exchange then took place between Mr. Goldstein and Chairman Walter (R. 77):

> Mr. Goldstein: Let me say this. As far as I am concerned, this visit of mine was simply for the purpose of asking the question that I mentioned a moment ago, whether or not you were aware of [the N.L.R.B.] election, and if not, to tell you about it, and to say this: that it looked to us and it would look to a lot of people as though the coincidence of the two was more than a coincidence. Now, I am saying that without accusing you.
>
> Chairman Walter: I do not care if you accuse me or not. I do not care what you have to say about me. But this telegram said very definitely that this was a case of union-busting. Now, there is no one on this committee interested in busting unions. All of us have very established records, but all of us are interested in seeing your union go out of business, because we do not believe it is good for the United States.

Mr. Goldstein refused to state any definite knowledge he had about an N.L.R.B. election, although he was repeatedly asked to do so (R. 78–79). The Committee adjourned without any action being taken (R. 79).

Petitioner's subpoena to appear at the February 21 hearing was served on February 15, 1955 (R. 22). The next day, the counsel for the Committee, Frank Tavenner, received a telegram from an attorney representing petitioner which requested a continuance un-

til "any time after next week," because of the attorney's extremely heavy schedule and also because of the N.L.R.B. election at Magnovox Company (R. 23). The request was at first denied. After further communication between counsel, Mr. Tavenner investigated the proposed election and explained the situation to Chairman Walter; the latter agreed that the hearings be postponed (R. 23). The hearings were rescheduled for February 28, 1955, in Washington, D.C. Petitioner's counsel was notified of the rescheduling and a new subpoena was issued and served on petitioner (R. 23, 24).

Petitioner appeared on February 28 and March 1, 1955, before a subcommittee in Washington, D.C. Upon convening the subcommittee on the morning of February 28, Representative Moulder, the acting chairman, explained the purposes of the hearing as follows (R. 60; Gov. Ex. 8, p. 19):[4]

> There will be considered at this hearing testimony relating to Communist Party activities within the field of labor, the methods used by the Communist Party to infiltrate labor organizations, and the dissemination of the Communist Party propaganda.

Before the first witness, Julia Jacobs, was sworn, her attorney (R. 201–202) filed with this Committee a motion (Def. Ex. 3) on her behalf, as well as on behalf of two other clients, petitioner and Lawrence Cover, who were subpoenaed to appear before the

[4] Government Exhibit 8 is the Hearings Before the Committee on Un-American Activities, House of Representatives, 84th Cong., 1st Sess., entitled *Investigation of Communist Activities in the Fort Wayne, Indiana, Area.*

subcommittee (Gov. Ex. 8, p. 20; R. 201–202). The motion claimed that the Committee did not have a valid legislative purpose; that no criminal charges had been made against the three witnesses and, in any event, under Article I, Section 3 of the Constitution, only the courts can investigate crime; that the Committee's authorizing resolution did not give it power to engage in breaking a union; that if the resolution had purported to convey this power, it would violate the First Amendment; that the authorizing resolution was unconstitutionally vague; and that compulsory disclosure of political beliefs and associations violated the First Amendment.

At the start of petitioner's testimony on February 28, he objected that the investigation did not have "a bona fide legislative purpose" (Gov. Ex. 8, p. 72). He answered a series of questions concerning his union offices, military service, and employment record (*id.* at pp. 73–79; R. 64–66). After a colloquy concerning "union busting", Congressman Doyle, a member of the subcommittee, told petitioner that "[i]f you will tell us the truth and the facts about the extent to which there are Communists in your union, that will be helpful. * * * We want to know if you are a Communist and the extent to which you have been" (Gov. Ex. 8, p. 79). Petitioner testified that he was still president of district council 9, vice-president of the national union, and a member of the general executive board (*id.* at pp. 73, 83–84; R. 67).

When petitioner was asked whether he had ever been a member of the Communist Party while holding any of the union offices, he stated that the Committee did not have the "right to investigate my political beliefs or affiliations, especially so when its purpose is union-busting" (R. 94). The question was rephrased several times, but petitioner still refused to answer on the ground that he had signed affidavits that he was not a Party member yearly from 1949 to 1954 and because the question violated the First Amendment (R. 94–95). Petitioner was then asked whether he had ever been a member of the Communist Party (count one, dismissed on the election of the government) (R. 96). Petitioner again invoked the First Amendment, but denied any reliance on the Fifth Amendment (R. 97).

Petitioner was asked whether he was a Party member at any time during 1948 (count two, on which petitioner was found not guilty since he was never directed to answer) (R. 98). He refused to answer on the ground that the question violated the First Amendment and the hearing had no legislative purpose (R. 99). Petitioner then refused to answer whether he was "now a member of the Communist Party" (count three), because his affidavit stated that he was not a Communist, because the question violated the First Amendment, and because "I am not going to cooperate with union busters" (R. 100–101). The hearings were then adjourned for the day (Gov. Ex. 8, p. 89).

Petitioner was the first witness when the hearings were renewed on March 1, 1955. After further ques-

tions about Communist activities in labor unions (Gov. Ex. 8, pp. 91–92; R. 103), the Committee asked whether petitioner attended a union meeting in 1946 at which he presented a letter written to him by the secretary of the Communist Party (R. 103). The Committee read to petitioner the minutes of the meeting which said that a letter had been sent to "Brother Gojack" from the secretary of the Party offering to donate a hundred copies of the Daily Worker (R. 106). Petitioner could not recall these events, nor who was the Party secretary or chairman in Indiana at the time (R. 106–107, 109–110). Petitioner repeated his objections to the hearings on the ground that they had no legislative purpose and violated the First Amendment, as well as that they exceeded the authority given the Committee by Congress (R. 108, 111). The Committee counsel asked petitioner whether he was acquainted with Elmer Johnson[4] (R. 107, 112). Congressman Scherer stated that "[y]ou have left us under the impression at this point that by reading the newspapers you knew that Johnson was chairman of the Communist Party of Indiana and I am asking you if that is the only way that you knew Johnson" (count four) (R. 112). Petitioner based his refusal to answer on the Committee's use of paid informers whom he called liars, on the First Amendment, and on the Committee's lack of author-

[4] The Committee had heard testimony that Elmer Johnson was the chairman of the Communist Party in Indiana (R. 32–34).

ity under its authorizing resolutions to break a union (R. 113; Gov. Ex. 8, pp. 102–104).

Petitioner refused to answer whether he knew Henry Aron* on the same ground that he had refused to answer the earlier questions, particularly the Committee's use of informers and the First Amendment (count five, on which petitioner was found not guilty) (R. 114–115). Petitioner was then asked and refused to answer on the basis of the First Amendment whether Johnson or Aron ever addressed a group of people when petitioner was present (count six) (R. 115–116).

After petitioner had charged a former member of the Committee with using a "paid liar's testimony to try to break [the Square D] strike" (Gov. Ex. 8, p. 105), he was questioned concerning the State Department's refusal to issue him a clearance in 1952 on security grounds (*id.* at pp. 112–118, 120, 122–123, 129–132). During this discussion, after petitioner had objected that the Committee was attempting to find him guilty without a trial, Congressman Doyle stated (*id.* at p. 125):

> [W]e are not here finding anybody guilty. We are here as a group of Congressmen trying to find out the extent to which Communists have infiltrated your union, if they have—the union of which you are the executive vice president. That is what we are here for, young man; not to find you guilty of anything, but to find out the extent to which you know of Communist domination or control in your union, if there is such domination and control or infiltration.

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*The Committee had heard testimony that Henry Aron was the secretary of the Communist Party in Indiana (R. 32–34).

Petitioner testified that he knew Russell Nixon, but when asked whether he knew Nixon to be a Party member, petitioner said that he knew him as legislative representative of the U.E. in Washington (R. 116, 119).[7] Petitioner said he would not answer questions concerning political beliefs and affiliations because of the Committee's lack of jurisdiction (R. 119–120). Petitioner then again refused to answer whether he knew Russell Nixon to be a member of the Communist Party (count seven) on the ground that the Committee's authorizing resolution did not give the Committee power to expose people (R. 121).

The Committee counsel handed petitioner a letter from Russell Nixon, which had been sent immediately after a peace pilgrimage to Washington, enclosing a letter from the Metal Workers Trade Union, an organization with headquarters in Paris which the Committee believed was Communist-dominated (R. 123; Gov. Ex. 8, p. 131; see R. 50–58). Petitioner admitted that he had sent the latter letter, which praised the Stockholm peace appeal, to locals of the U.E. (Gov. Ex. 8, pp. 141–145). The Committee counsel noted that petitioner had said that he had engaged in many meetings on behalf of peace and informed petitioner that the Committee believed that the Communist Party had been involved in the Stockholm peace appeal and similar activities (R. 121). Petitioner then refused to answer whether he had taken "an active part in

[7] Nixon had earlier appeared as a witness before the Committee and refused to answer questions concerning his Party activities (R. 118–119). Dorothy Funn, a former member of the Communist Party who had been a legislative representative for the National Negro Congress in Washington, had testified before the Committee in 1953 that Russell Nixon was a member of the Communist Party (R. 43–48).

the peace pilgrimage to Washington which was organized by one of the 'front' organizations known as the America Peace Crusade" (count eight) (R. 122). When petitioner based his refusal to answer on the First Amendment, the Committee counsel said (R. 122):

> I want to make it clear, Mr. Gojack, that I am not interested at all in what your beliefs or opinions were about those matters. What I am interested in is the extent to which the Communist Party was engaged in manipulating peace moves in this country in behalf of a foreign power.

Congressman Doyle said (R. 122–123):

> Mr. Chairman, may I add * * * that I am also interested in knowing what the witness knows about the extent to which the American Communist Party, in connection with these peace moves or otherwise, was using the leadership of American labor unions, especially any labor union that the witness might have been a member of at that time or had any connection with. The question is the extent to which the Communist Party had infiltrated American labor unions * * *, the extent to which they were using it then and are using it now for their conspiratorial purposes.

Petitioner refused to answer, on the grounds he had already stated, whether he had taken part in the pilgrimage to Washington, whether he was a member of

the American Peace Crusade, and whether he had frequently served as chairman of its meetings (Gov. Ex. 8, p. 148).

Petitioner was shown a copy of the February 1, 1951, issue of the Daily Worker which listed a "John Gojack, international vice president, UERMWA, Fort Wayne, Ind." as an initial sponsor of the American Peace Crusade (R. 124; see R. 41).[8] Petitioner refused to answer who had solicited him as sponsor, on the grounds he had previously stated (count nine); also he would not say what method of solicitation had been used (R. 124–125).

When petitioner refused to answer whether he was a sponsor of a particular conference because the Committee could not "be a court, jury, and prosecutor," Congressman Doyle said (Gov. Ex. 8, p. 153):

> [W]e do not try to do that. We are trying to get your cooperation as one of the labor leaders of our country, to give us facts which will help us more intelligently to legislate with reference to the extent to which the Communist conspiracy has entered your union and either controlled it or tried to control it.

The Committee counsel stated that the Committee had information that petitioner was a member of the American Peace Crusade, as well as six other organizations (*id.* at p. 154). Petitioner refused to answer

[8] The Committee also had a leaflet of the American Peace Crusade, which was signed by a "John Gojack," entitled "Bring Our Boys Home From Korea. Make Peace With China Now" (R. 41).

whether he was a member of any of those organizations (*ibid*).

SUMMARY OF ARGUMENT

I

The Committee was acting pursuant to a valid legislative purpose.

A. It is established that the Committee, in conducting extensive investigations into Communist activities in this country, has been pursuing a valid legislative purpose. In *Barenblatt* v. *United States*, 360 U.S. 109, 127–128, the Court noted that Congress "has enacted or considered in [the security] field a wide range of legislative measures, not a few of which have stemmed from recommendations of [this] very Committee" and held that investigations of Communist activities had a valid legislative purpose. See also *Wilkinson* v. *United States*, 365 U.S. 399, 409–411; *Braden* v. *United States*, 365 U.S. 431, 433–435.

Petitioner claims, relying on statements of the Chairman of the Committee and what he alleges are the Committee's methods of operation, that the Committee's investigations are conducted for purposes of exposure, not legislation. But an identical argument, based on the same or similar evidence, was rejected by this Court in *Watkins* v. *United States*, 354 U.S. 178, 199–200, and again in *Barenblatt*, and *Wilkinson*, on the ground that "[s]o long as Congress acts in pursuance of its constitutional power, the Judiciary lacks authority to intervene on the basis of the motives which spurred the exercise of that power" (*Barenblatt*, 360 U.S. at 132).

B. The record shows that the particular investigation involved in this case had a valid legislative purpose. The Committee had information that the union of which petitioner was an important official was dominated by Communists. The Committee reasonably believed that petitioner could supply information concerning Communist activities in the union. This purpose was stated to petitioner at the hearings. The only suggestions at the hearings that the Committee's purpose was to "bust" the union, to expose petitioner, or try and convict him, were petitioner's own claims which the Committee repeatedly denied.

Petitioner relies on newspaper stories concerning statements made by members of the Committee. But, as we have noted, this Court has rejected attempts to investigate the motives of Committee members based on official statements on the floor of Congress, at Committee hearings, and in Committee reports; *a fortiori*, a defendant cannot challenge the legislative purpose of a Congressional committee on the basis of statements made to the press.

C. The hearings did not constitute a bill of attainder. Only a legislative act which punishes a person by depriving him of a civil or political right without a judicial trial constitutes a bill of attainder. The publication of facts concerning petitioner's activities was not a deprivation of such a right. In any event, even if his "exposure" did in fact deprive him of a recognized right, this disability must have been the intended object of Congress in order to violate

820763—61——3

the bill of attainder clause. *Flemming* v. *Nestor*, 363 U.S. 603, 613–614. As we have seen, however, the Committee's aim was to secure information from petitioner as to Communist activities in labor unions, not to expose him.

II

The Committee's investigation did not violate the First Amendment. This Court has held in *Barenblatt* v. *United States*, *supra*, that the Committee can, consistent with the First Amendment, investigate all aspects of Communist activity. Thus, the Committee did not violate the First Amendment when it questioned petitioner about Communist activties in labor unions—a subject about which it could reasonably believe he possessed pertinent information.

III

As we have shown in our brief in *Shelton* v. *United States*, No. 9, this Term, pp. 25–32, a witness before a Congressional committee cannot claim for the first time at his trial that he was not apprised by the Committee of the pertinency of the questions. Here, petitioner made numerous objections to the authority of the Committee to conduct the hearing and to ask particular questions, but he never even suggested that he was in doubt about the pertinency of the questions he refused to answer. His preliminary statement, a general challenge to the power of the Committee, came before any questions were asked and therefore could not, and did not, claim that the questions were not pertinent. In *Barenblatt*, this Court held that a similar general statement, attacking the jurisdiction and

power of the Committee, did not properly raise the issue of pertinency.

B. In any event, petitioner was clearly apprised of the pertinency of the questions. He was apparently present when, at the start of the hearing, the chairman of the subcommittee explicitly stated that the investigation was intended to secure information on Communist activity in labor unions. This statement was repeated by Congressman Doyle during the testimony of the first witness, which petitioner admitted hearing, and twice during petitioner's own testimony.

The question whether petitioner was then a member of the Communist Party was on its face pertinent to the subject of Communist activities in labor unions. The pertinency of an identical question was held in *Barenblatt* to be "clear beyond doubt" to the subject of Communist activity in education (360 U.S. at 125). Since petitioner was given a general sentence on all six counts, which was less than the maximum authorized under any one count, the judgment below must be affirmed if his conviction on any one count was valid. Moreover, the questions involved in the other six counts were, either on their face or as shown by statements made to petitioner at the time, clearly pertinent.

IV

Petitioner claims that he was entitled to dismissal of the indictment or at least a hearing because of the bias of government employees who were on the grand jury. We have shown in our brief in *Shelton, supra,* pp. 62–76, that a defendant cannot challenge an indictment because of the bias of grand jurors

unless he can show specific and convincing evidence of strong bias in individual grand jurors. Here, as in *Shelton*, petitioner made no allegations with respect to individual grand jurors and did not even state any specific facts of bias among government employees generally.

V

Petitioner contends that the indictment was required to specify the subjects under inquiry and to allege that his refusal to answer was wilful. We point out in our brief in *Shelton, supra*, pp. 78–83, that under Rule 7(c) of the Federal Rules of Criminal Procedure and the decisions of this Court and the courts of appeals, an indictment need not specify the subject under inquiry. And we have shown in our brief in *Liveright, supra*, pp. 50–51, that an indictment need not allege that the witness' refusal to answer the questions was wilful if, as here, the indictment alleges that the witness has "unlawfully" refused to answer.

ARGUMENT*

I

THE COMMITTEE WAS ACTING PURSUANT TO A VALID LEGISLATIVE PURPOSE

Petitioner contends that the courts below erred in holding that the Committee was acting pursuant to a

* For the convenience of the Court we have included, as an appendix to this brief (the last of our briefs in this set of six contempt-of-Congress cases), a chart showing the principal contentions made by the petitioners and the government. The chart also shows the government brief in which the main argument appears as to each point common to more than one case. See *infra*, p. 45.

valid legislative purpose. More specifically, he argues that the purpose of the Committee, generally, is exposure (Pet. Br. 28–34); that the particular purpose of the Committee in calling him was exposure (Pet. Br. 34–47); that the purpose of the hearings was to attaint petitioner (Pet. Br. 47–49); and that the trial court erroneously excluded evidence showing the invalid legislative purpose of the Committee (Pet. Br. 53–56). These contentions are all without merit.

A. THE COMMITTEE'S INVESTIGATIONS OF COMMUNIST ACTIVITIES HAVE BEEN FOR A VALID LEGISLATIVE PURPOSE

It is established that the House Un-American Activities Committee, in conducting extensive investigations into Communist activities in this country, has been acting pursuant to a valid legislative purpose. This Court held in *Barenblatt* v. *United States*, 360 U.S. 109, 120–121—which was decided after the hearings involved in this case—that "it can hardly be seriously argued that the investigation of Communist activities generally, and the attendant use of compulsory process, was beyond the purview of the [House Un-American Activities] Committee's intended authority under Rule XI." The Court upheld the power of Congress to conduct such investigations of Communist activities on the ground that the investigations have a valid legislative purpose (*id.* at 127–128):

> That Congress has wide power to legislate in the field of Communist activity in this Country, and to conduct appropriate investigations in aid thereof, is hardly debatable. The existence of such power has never been questioned

> by this Court, and it is sufficient to say, without particularization, that Congress has enacted or considered in this field a wide range of legislative measures, not a few of which have stemmed from recommendations of the very Committee whose actions have been drawn in question here. In the last analysis this power rests on the right of self-preservation * * *.

This holding was reiterated in *Wilkinson* v. *United States*, 365 U.S. 399, 409–411, and again in *Braden* v. *United States*, 365 U.S. 431, 433–435.

Petitioner, however, claims (Pet. Br. 28–34), relying on statements of the Chairman of the Committee and its employees and what he alleges are the Committee's methods of operation, that the Committee investigations are conducted for the purpose of exposure, not legislation. The identical argument, based on the same or similar evidence,[10] was also made in *Watkins* v. *United States*, 354 U.S. 178. In rejecting this argument, the Court stated (*id.* at 199–200):

> Petitioner has earnestly suggested that the difficult questions of protecting these rights [rights guaranteed by the Bill of Rights] from infringement by legislative inquiries can be surmounted in this case because there was no public purpose served in his interrogation. His conclusion is based upon the thesis that the Subcommittee was engaged in a program of exposure for the sake of exposure. The sole purpose of the inquiry, he contends, was to bring down upon himself and others the vio-

[10] Compare the record (pp. 160–214) and petitioner's brief (Pet. Br. 28–34) in this case with the record (pp. 11–16, 58–64, 93–168) and the petitioner's brief (pp. 12–34) in *Watkins*, No. 261, Oct. Term, 1956.

> lence of public reaction because of their past beliefs, expressions and associations. In support of this argument, petitioner has marshalled an impressive array of evidence that some Congressmen have believed that such was their duty, or part of it.
>
> We have no doubt that there is no congressional power to expose for the sake of exposure. The public is, of course, entitled to be informed concerning the workings of its government. That cannot be inflated into a general power to expose where the predominate result can only be an invasion of the private rights of individuals. But a solution to our problem is not to be found in testing the motives of committee members for this purpose. Such is not our function. Their motives alone would not vitiate an investigation which had been instituted by a House of Congress if that assembly's legislative purposes is being served.

The contention rejected in *Watkins* was renewed in *Barenblatt*—that the "true objective of the Committee and of the Congress was purely 'exposure' " (360 U.S. at 132)—on the basis of virtually the same evidence. See *id.* at 153–159 (Mr. Justice Black dissenting).[11] This Court, however, again held that (*id.* at 132–133):

> So long as Congress acts in pursuance of its constitutional power, the Judiciary lacks authority to intervene on the basis of the motives which spurred the exercise of that power. * * * It is, of course, true, as was said in *McCray* v. *United States*, 195 U.S. 27, 55, "that if there

[11] See also the record (pp. [illegible]2) and the petitioner's brief (pp. 51–52) in *Barenblatt*, No. 35, Oct. Term, 1958.

> be no authority in the judiciary to restrain a lawful exercise of power by another department of the government, where a wrong motive or purpose has impelled to the exertion of the power, that abuses of a power conferred may be temporarily effectual. The remedy for this, however, lies, not in the abuse by the judicial authority of its functions, but in the people, upon whom, after all, under our institutions, reliance must be placed for the correction of abuses committed in the exercise of a lawful power." These principles of course apply as well to committee investigations into the need for legislation as to the enactments which such investigations may produce. Cf. *Tenney* v. *Brandhove*, 341 U.S. 367, 377–378.

Similarly, in *Wilkinson*, this Court held that "it is not for us to speculate as to the motivations that may have prompted the decision of individual members of the subcommittee to summon the petitioner." 365 U.S. at 412.

B. THE RECORD SHOWS THAT THIS PARTICULAR INVESTIGATION HAD A VALID LEGISLATIVE PURPOSE

After the government had introduced evidence at petitioner's trial showing the Committee's sustained legislative purpose (R. 7), the district court found "that the committee was engaged in a valid legislative purpose" (R. 36). The court of appeals stated that "[t]he record clearly demonstrates that the Committee hearing was one constituting a continued investigation which the Committee was conducting into Communist activities in the labor field, including infiltration into labor organizations and Communist

propaganda" (R. 219). Upon a thorough review of the record (R. 219–229), the court concluded (R. 229):

> Exposure no doubt resulted from the inquiry. But no one can fairly read the record without perceiving that the dominant purpose of the Committee was a legislative one, namely, to learn the extent of Communist infiltration or domination of labor unions.

We submit that the court of appeals' holding is fully supported by the evidence.

At the time of the issuance of the subpoena the Committee had reason to believe that petitioner would have information concerning Communist activities in the labor field. The Committee had information that petitioner was a general vice-president of the United Electrical, Radio, and Machine Workers of America, and president of District No. 9 of the union. The Committee had received sworn testimony in 1951 from a long-time district president of U.E. that almost all the important officials of the union were Communist Party members. In July 1953, a former Communist who had been an organizer for the U.E., testified that all of the organizers for the U.E. who attended meetings were members of the Communist Party (see supra, p. 3). It is clear that when petitioner was subpoenaed the Committee reasonably believed that he would have information concerning Communist activities in labor unions, which was a subject of the Committee's legislative interest.

The record shows that on February 9, 1955, when the Committee announced that hearings would be

held at Fort Wayne, Indiana,[12] neither the Chairman of the Committee, nor the Committee counsel, nor the members of the subcommittee had any knowledge that an N.L.R.B. election was pending at the Magnavox plant in Fort Wayne and had been set for February 24, 1955 (R. 76–77, 91, 155). However, on February 10, 1955, Mr. Walter received from petitioner a highly abusive telegram (R. 86–88). In his telegram, petitioner stated that, in view of the scheduled N.L.R.B. election at the Magnavox plant on February 24, and in view of the criminal conviction of former Committee Chairman Thomas for "bribery," he had every right to ask whether the Committee had been bribed by management to help it in "union busting." On February 14, 1955, George Goldstein, Washington representative of the U.E., sought a continuance of the hearing until after the union election at Magnavox. Because of the nature of the telegram sent by petitioner on the 10th, Chairman Walter determined to hear Mr. Goldstein only at a reported session (R. 79).

Petitioner suggests (Pet. Br. 8–9) that the colloquy which developed during the interview is evidence that the Committee was not furthering a legislative purpose. The material portions of the interview are as follows (R. 77):

> Chairman Walter. Not until we received an insulting telegram. After I received that telegram, then I became aware of the fact that there was an election being held. We had previously absolutely no knowledge of it, and

[12] The Committee counsel testified that no newspaper release was prepared by the Committee (R. 155).

> the only reason we decided on this hearing there was because these people are there. If they are well enough to be in Fort Wayne, Indiana, working, they are well enough to testify. That is our attitude.
>
> * * * * *
>
> Chairman Walter. I do not care if you accuse me or not. I do not care what you have to say about me. But this telegram said very definitely that this was a case of union-busting. Now, there is no one on this committee interested in busting unions. All of us have very established records, but all of us are interested in seeing your union go out of business, because we do not believe it is good for the United States.

Commenting on this colloquy, the court below stated (R. 225):

> [I]t can be gleaned that Mr. Walter showed some displeasure which, under the circumstances, and having in mind the abusive and insulting telegram * * * can be understood and as readily be excused. Congressmen are more fortunate than judges in at least this respect, that when attacked unjustly, they are at liberty to defend themselves and to express themselves forcefully and vigorously.[13]

[13] Petitioner points (Pet. Br. 8–9, 36) to testimony of a newspaper reporter who wrote a story to the effect that at the meeting of February 14, 1955, the "House Un-American Activities Committee members frankly declared today they are out to break the alleged Communist-led Independent United Electrical Workers Union (R. 199)." The reporter admitted, however, the accuracy of the stenographically reported conference between Mr. Walter and Mr. Goldstein on February 14, although he "thought" something more was said by Mr. Walter or another representative of the Committee (R. 79–80).

While a continuance of the scheduled hearing was at first denied (R. 23), it was later granted and the hearing was set for February 28 (R. 23–24). On that date the hearings opened with an announcement from the Chairman of the subcommittee that the subject of the inquiry was "Communist Party activities within the field of labor, the methods used by the Communist Party to infiltrate labor organizations, and the dissemination of the Communist Party propaganda." (see *supra*, p. 6). The questions asked petitioner showed clearly that the Committee was continuing its investigation of Communist infiltration in the labor field. No member of the Committee nor its counsel indicated that the Committee was engaged in "union busting" or was attempting merely to expose petitioner. Instead, while petitioner claimed that the Committee was engaged in union busting and in attempting to try him for a criminal offense, the subcommittee members and counsel repeatedly stated that the subcommittee was seeking information on Communist activities. And more specifically, Congressman Doyle four times stated that the purpose of the hearings was to obtain information on Communist infiltration and control of labor unions (see *supra*, pp. 7, 10, 12, 13).

In response to this clear proof during the hearing itself that the Committee was pursuing a valid legislative purpose, petitioner relies almost entirely on newspaper stories (Pet. Br. 35–36). We submit that such evidence constitutes merely an attempt to look into the motives of the Committee members, which, as we have seen (pp. 19–22), petitioner is not per-

mitted to do. In *Watkins* and *Barenblatt* this Court held that a defendant is not entitled to challenge the motives of committee members on the basis of their official statements on the floor of Congress, at committee hearings, and in committee reports; *a fortiori,* he cannot do so on the basis of unofficial statements made to the press. Moreover, even if petitioner could look into the motives of the Committee, the newspaper stories are at most only unpersuasive bits-and-pieces that cannot outweigh the proof in the transcript of the hearing itself.

It is of course true that "exposure" of petitioner, as well as other persons, resulted to some extent from the hearings. But this is an inevitable result of any Congressional investigation into secret or unpublicized activities, whether they are criminal or not. Thus, petitioner's argument is in effect that any exposure resulting from an inquiry is exposure "for the sake of exposure," and that, since exposure results from an inquiry, the inquiry must therefore be for a non-legislative purpose. On the contrary, exposure of problem areas is one of the preliminary steps to remedial legislation, and personnel is often a vital part of the problem (see our brief in *Whitman* v. *United States,* No. 10, this Term, pp. 35, 49–50). It was of obvious importance to this investigation of Communist activities in labor unions, and particularly the U.E., to determine what officers of the union were Party members. Such information would show the extent to which the unions were Communist-controlled and therefore the need, or lack of any need, for legislation. In short, it is only exposure unrelated to the

furtherance of a legislative purpose which is prohibited. *Watkins* v. *United States, supra,* 354 U.S. at 200; *Barenblatt* v. *United States, supra,* 360 U.S. at 132.

C. THE HEARING DID NOT CONSTITUTE A BILL OF ATTAINDER

Petitioner claims (Pet. Br. 47–49) that, since the hearing was intended to expose him, it was also a bill of attainder. He reasons that such a proceeding results in "a judgment handed down without judicial trial that the witness is guilty of subversion." This contention is clearly erroneous.

A bill of attainder is a legislative act which inflicts punishment without a judicial trial. *E.g., Cummings* v. *Missouri,* 4 Wall. 277, 323; *United States* v. *Lovett,* 328 U.S. 303, 315–317. The punishment inflicted, however, need not be punishment in the usual sense of fine or imprisonment. It may consist of deprivation of the privilege of pursuing a certain profession (*Ex parte Garland,* 4 Wall. 333, 377), or, in some circumstances, of working for the government (*United States* v. *Lovett, supra,* 328 U.S. at 316), or, in general, of "any rights, civil or political, previously enjoyed," depending upon "the circumstances attending and the causes of the deprivation." *Cummings* v. *Missouri, supra,* 4 Wall. at 320; *Garner* v. *Los Angeles Board,* 341 U.S. 716, 722. We know of no case, however, in which the public presentation of the facts concerning an individual—or "exposure" as petitioner terms it—has been held to be a bill of attainder. The publication of facts

concerning petitioner's activities did not deprive him of any recognized civil or political right.

In any event, even if petitioner were correct that his "exposure" deprived him of a recognized right, it is settled that not all disabilities constitute punishment within the meaning of the bill-of-attainder clause. This Court has recently held that whether a statute is a bill of attainder depends upon the purpose of the statute. In *Flemming* v. *Nestor*, 363 U.S. 603, 613–614, the Court stated that:

> In determining whether legislation which bases a disqualification on the happening of a certain past event imposes a punishment, the Court has sought to discern the objects on which the enactment in question was focused. Where the source of legislative concern can be thought to be the activity or status from which the individual is barred, the disqualification is not punishment even though it may bear harshly upon one affected. The contrary is the case where the statute in question is evidently aimed at the person or class of persons disqualified.

Similarly, the plurality opinion of the Chief Justice in *Trop* v. *Dulles*, 356 U.S. 86, 96, stated:

> If the statute imposes a disability for the purposes of punishment—that is, to reprimand the wrongdoer, to deter others, etc.—it has been considered penal. But a statute has been considered nonpenal if it imposes a disability, not to punish, but to accomplish some other legitimate governmental purpose. The Court has recognized that any statute decreeing some adversity as a consequence of certain conduct

> may have both a penal and a nonpenal effect. The controlling nature of such statutes normally depends on the evident purpose of the legislature.

See also the opinion of Mr. Justice Frankfurter in *De Veau* v. *Braisted*, 363 U.S. 144, 160.

Apparently recognizing that he must show that the disability he claims to have suffered was the purpose of the hearing, petitioner rests his contention that the hearing was a bill of attainder on his allegation that the Committee's purpose was exposure (Pet. Br. 47). Thus, petitioner in effect admits—as the decisions of this Court discussed above require him to do—that the mere fact that exposure may have resulted from the hearing cannot make the hearing a bill of attainder. But, as we have shown above (pp. 22–28), the record clearly shows that the hearing was intended to secure information concerning Communist activities in labor unions, not to expose petitioner.

D. THE TRIAL COURT PROPERLY EXCLUDED THE NEWSPAPER STORIES WHICH PETITIONER OFFERED TO PROVE THAT THE COMMITTEE HAD AN INVALID PURPOSE

Petitioner contends (Pet. Br. 53–56) that the trial court erred in excluding newspaper stories allegedly tending to show that the hearing was called for the purpose of exposure. Similar evidence (in some instances the identical evidence)—relating to the purposes of the Committee in general—was offered in *Watkins* v. *United States, supra,* and rejected by the trial court.[14] In upholding the court's decision the court of appeals stated (233 F. 2d 681, 687):

[14] See the record in *Watkins*, No. 261, Oct. Term, 1956, pp. 92–134, 164–174.

> Appellant would have us judge the present controversy upon the basis of speeches made by members of Congress and others, and upon newspaper articles, etc. We cannot do so. Such material is not evidence. The question is an individual one, whether the inquiry is indeed pertinent to a valid legislative purpose. It cannot be solved by generalities culled from speeches—many of them no doubt partially extemporaneous—or from partisan assailants, critics, friends or defenders of some project or cause. Moreover, even if the unbridled power of exposure were claimed by some members of Congress, the claim would not establish its use in any particular inquiry. We must judge each inquiry in its own setting and upon its own facts.

As we have shown above, this Court held in *Watkins* that it was not the function of the Court to test the motives of Congressmen: "Their motives alone would not vitiate an investigation which had been instituted by a House of Congress if that assembly's legislative purpose is being served" (354 U.S. at 200) (see *supra*, pp. 19–22). Similarly, extemporaneous statements to the press by members of the Committee could not prove in this case that the investigation was being conducted for an invalid purpose when the inquiry into Communist infiltration into the field of labor clearly served a legislative purpose of Congress.[15]

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[15] Petitioner also objects (~~Pet. Br. 56~~) to the trial court's refusal (~~R. 160~~) to allow him to introduce evidence showing that the labor relations director of the Magnavox plant knew that petitioner was going to be subpoenaed three days before he was actually subpoenaed and that he announced this fact to employees at the plant. If these allegations are true, they can-

II

THE COMMITTEE'S INVESTIGATION DID NOT VIOLATE THE FIRST AMENDMENT

Petitioner claims (Pet. Br. 50–53) that the Committee's investigation violated his rights under the First Amendment. As he himself suggests (Pet. Br. 52), however, this issue is controlled by *Barenblatt* v. *United States, supra*, 360 U.S. at 125–134. This Court there upheld the constitutionality of a Congressional investigation of Communist activities in education. It necessarily follows that this investigation of Communist activities in labor unions (see *infra*, pp. 36–38) was likewise valid under the First Amendment.

Petitioner contends that the Committee did not have probable cause to subpoena him. As we have shown in our brief in *Shelton* v. *United States*, No. 9, this Term, pp. 50–55, the rule laid down by this Court is that a Congressional committee can properly subpoena a witness when it has reasonable basis for believing that the witness has information related to the subject under investigation which would be of value to the committee. *Barenblatt* v. *United States, supra*, 360 U.S. at 134; *Wilkinson* v. *United States, supra*, 365 U.S. at 412. We submit that the Committee clearly had such a reasonable basis for subpoenaing petitioner.

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not possibly prove that the investigation served no legislative purpose. The most this evidence would tend to show is that some members or employees of the Committee had an improper motive. But even this inference is extremely weak since petitioner does not claim how or from whom the Magnavox official received the information. Certainly that official's use of the information cannot be attributed to the Committee.

At the time petitioner was subpoenaed, the Committee had information that the United Electrical Radio and Machine Workers of America had been infiltrated by the Communist Party. Indeed, the Committee had heard sworn testimony that virtually all the union's officers were Communists (see *supra*, p. 3). Petitioner was admittedly general vice-president of that union and president of District No. 9. The Committee had further information linking petitioner with Russell Nixon, a lobbyist for the union who had been identified by a witness as a member of the Communist Party, and with the American Peace Crusade, which the Committee believed to be a Communist-front organization (see *supra*, pp. 10–11, 13). In the light of this information, it cannot be seriously contended that the Committee lacked reason to believe that petitioner had information which would aid in its investigation of Communist activities in the labor field.

III

PETITIONER, HAVING FAILED TO CHALLENGE THE PERTINENCY OF THE QUESTIONS BEFORE THE COMMITTEE, CANNOT CLAIM FOR THE FIRST TIME AT HIS TRIAL THAT HE WAS NOT APPRISED OF THEIR PERTINENCY. IN ANY EVENT, PETITIONER WAS APPRISED OF THEIR PERTINENCY

A. THE ISSUE OF PERTINENCY WAS NOT PROPERLY RAISED BEFORE THE COMMITTEE

Petitioner claims (Pet. Br. 57–58) that he was not adequately apprised by the subcommittee of the subject under inquiry so that he could determine whether the questions asked him were pertinent to this subject. But petitioner failed to raise this objection before the

subcommittee and, under this Court's decisions, he is precluded from raising it for the first time in the contempt proceeding.

1. As we have shown in our brief in *Shelton* v. *United States*, *supra*, pp. 25–32, a witness before a Congressional committee cannot claim that the committee has failed to apprise him of the subject under inquiry and the pertinency of the questions to this subject, unless he raises the issue of pertinency before the committee itself. *Barenblatt* v. *United States*, *supra*, 360 U.S. at 123–124; *Deutch* v. *United States*, 367 U.S. 456, 469. He cannot wait until trial to raise an objection which the committee could easily remedy.

2. Petitioner, who appeared before the subcommittee with counsel, did not make even the "contemplated" and "buried" objection to the pertinency of the questions which was made by the witness in *Barenblatt* nor did he indicate any doubt as to the importance of the questions such as was stated by the witness in *Deutch*. Petitioner's preliminary statement was no more than a general challenge to the power of the subcommittee to hold any hearings or to ask any questions of the witnesses before it. The statement claimed that the Committee had no valid legislative purpose, that the hearing violated the bill-of-attainder clause of the Constitution and the First Amendment, and that the Committee's authorizing resolution did not authorize the hearing and was unconstitutionally vague. (see *supra*, pp. 6–7). This did not, and could not, constitute an objection to the pertinency of questions not yet asked. A similar statement attacking the jurisdiction and power of the

committee was made by the witness in *Barenblatt*, but the Court concluded that this "general challenge to the power of the Subcommittee" was not adequate "to trigger what would have been the Subcommittee's reciprocal obligation had it been faced with a pertinency objection" to apprise the witness of the pertinency of the questions. 360 U.S. at 124.[14] While in *Barenblatt* the memorandum contained "contemplated" and "buried" objections on the ground of pertinency (although this Court did not consider them sufficiently clear), here petitioner's statement did not make even those "contemplated" and "buried" objections.

Petitioner likewise did not question the pertinency of any of the particular questions asked him during the course of the hearing. Instead, he repeated the objections in his statement: that the hearing was not within the power given the Committee by its authorizing resolution; that the hearing was intended to "bust" the union, or to expose petitioner, or to try and convict him, and therefore did not have a valid legislative purpose; and that the hearing as a whole and particular questions violated the First Amendment. In addition, he claimed that the Committee relied on informers who were liars (see *supra*, pp. 7–13). Obviously, none of these objections even suggested to the subcommittee that petitioner was claiming that he did not understand the pertinency of the questions.

[14] Compare the legal memorandum filed by the petitioner in *Barenblatt* (see the record in No. 35, Oct. Term, 1958, pp. 227–235) with the memorandum in this case (R. 201–202).

B. PETITIONER WAS APPRISED OF THE PERTINENCY OF THE QUESTIONS

In any event, even if petitioner had properly objected to the pertinency of the questions, it is clear that he was apprised of their pertinency.

1. Petitioner was apprised, from at least three different sources, that the subject under inquiry at the hearings was Communist activity in labor unions. Thus, at the start of the hearings on February 28, the day petitioner first testified, the chairman of the subcommittee specifically stated (R. 60–61):

> There will be considered at this hearing testimony relating to Communist Party activities within the field of labor, the methods used by the Communist Party to infiltrate labor organizations, and the dissemination of the Communist Party propaganda.

This statement was made immediately before Julia Jacobs was called as the first witness. Petitioner, at the beginning of his testimony, indicated that he had heard Miss Jacobs' testimony (Gov. Ex. 8, p. 72) and subsequently reaffirmed this fact (*id.* at p. 93). Moreover, counsel representing petitioner had also represented Julia Jacobs and was certainly present when the opening statement was made.[17]

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[17] Petitioner contends (Pet. Br. 57) that the presence of his counsel when the opening statement was made is not sufficient. As we have shown, however, there is every indication that petitioner was present when the statement was made. In addition, it would certainly seem that petitioner could be charged with the knowledge of his counsel when counsel appeared for each of three witnesses (Miss Jacobs, Henry Aron, and petitioner) who appeared on the opening day of the hearings and the three, through counsel, filed a joint statement objecting to the Committee's authority (see *supra*, pp. 6–7).

Second, as we have just noted, petitioner admitted knowledge of the testimony of Julia Jacobs. The questions asked by the Committee of Miss Jacobs—concerning the witness' employment and work in the labor movement and her possible Communist Party membership—clearly showed that the subject of the Committee's inquiry was Communist activity in labor unions (Gov. Ex. 8, pp. 20–56). Miss Jacobs was questioned as to many of the same activities about which petitioner was questioned, including the Square D strike (*id.* at p. 31), the pilgrimage to Washington organized by the American Peace Crusade (*id.* at p. 38), and petitioner's passport problems (*id.* at p. 39). Moreover, Congressman Doyle explicitly restated the purpose of the hearings during Miss Jacobs' testimony (*id.* at pp. 43–44):

> [M]y questions are directed to you because we are interested in finding out the extent and through what persons, and how, the Communist Party in your experience has undertaken to influence labor unions wherever you know anything about them.
>
> * * * * *
>
> May I make this further statement: I am not interested in asking any question or getting you to answer any question that deliberately or otherwise is intended to hurt any organization which is patriotic and law-abiding. That is whether it is a labor union, or whatever it is. But I am interested, as I stated before, in getting your cooperation if you will give it to us on helping to uncover any person or any group of persons who are undertaking to subvert the labor union of which you are secretary or any

> other group to their own Communist Party objectives.
>
> The purpose of this committee sitting here under Public Law 601 is to get that information, if we can, from you and others, looking toward amendments to or strengthening legislation dealing with subversive activities.

Third, during petitioner's appearance before the subcommittee, he was twice told by Congressman Doyle the precise question under inquiry. Before petitioner was asked the question involved in count seven, Congressman Doyle told him that the subcommittee was "trying to find out the extent to which Communists have infiltrated your union, if they have—the union of which you are the executive vice president" (see *supra*, p. 10). Subsequently, at the time petitioner was directed to answer the question involved in count eight, Congressman Doyle stated (see *supra*, p. 12):

> * * * I am also interested in knowing what the witness knows about the extent to which the American Communist Party, in connection with these peace moves or otherwise, was using the leadership of American labor unions, especially any labor union that the witness might have been a member of at that time or had any connection with. The question is the extent to which the Communist Party had infiltrated American labor unions * * * the extent to which they were using it then and are using it now for their conspiratorial purposes.

See also the statements of Congressman Doyle at the start of petitioner's testimony and after petitioner had refused to answer all the questions involved in the indictment (see *supra*, pp. 7, 13).

2. All six of the questions on which petitioner was convicted were, either on their face or as shown by the statements made to petitioner at the time, pertinent to the subject of Communist activity in labor unions. However, since petitioner was given a general sentence and a fine on all six counts which was less than the maximum authorized by 2 U.S.C. 192 under any one count, the judgment below must be affirmed if his conviction on any one of the counts was valid. *E.g.*, *Barenblatt* v. *United States*, *supra*, 360 U.S. at 115.

The question involved in count three—whether petitioner was a the time of the hearings a member of the Communist Party—was on its face pertinent to the subject under inquiry. This Court in *Barenblatt* stated that the pertinency of an identical question (see 360 U.S. at 114) "was clear beyond doubt" (*id.* at 125) to the subject of Communist activity in education. It is equally pertinent to the subject of Communist activities in the labor field.

Petitioner was also apprised of the pertinency of the question involved in count four—"[y]ou have left us under the impression at this point by reading the newspapers you knew that Johnson was chairman of the Communist Party of Indiana and I am asking you if that is the only way you knew Johnson" (see *supra*, p. 9). This question, when asked of an important labor official residing in Indiana, is clearly pertinent to an investigation of Communist activities in labor unions. Similarly, petitioner was apprised of the pertinency of at least half of the information sought by the question involved in count six—whether Elmer Johnson or Henry Aron ever

addressed a group of people while petitioner was present.

Before petitioner was asked the question involved in count seven—whether he knew Russell Nixon to be a Party member—petitioner had been told by Congressman Doyle that the subcommittee was investigating Communist control of the U.E. Petitioner had admitted that he was acquainted with Mr. Nixon and that he knew that Nixon was legislative representative of the U.E. in Washington (see *supra*, pp. 10–11). This question concerning the Communist Party membership of a high union official was just as pertinent to the subject of Communist activities in labor unions as the question concerning whether petitioner himself was a Party member.

The subcommittee also explained to petitioner the question involved in count eight—whether he had "an active part in the peace pilgrimage to Washington which was organized by one of the 'front' organizations known as the American Peace Crusade" (see *supra*, pp. 11–12). The Committee counsel told petitioner that the question was directed to discovering "the extent to which the Communist Party was engaged in manipulating peace moves in this country in behalf of a foreign power." And Congressman Doyle stated that he wished to discover (see *supra*, p. 12):

> • • • [W]hat the witness knows about the extent to which the American Communist Party, in connection with these peace moves or otherwise, was using the leadership of American labor unions, especially any labor union

> that the witness might have been a member of at that time or had any connection with. The question is the extent to which the Communist Party had infiltrated American labor unions * * *, the extent to which they were using it then and are using it now for their conspiratorial purposes.

In addition, before petitioner was asked the question involved in count nine—who had solicited him as a sponsor of the American Peace Crusade—he was shown an article of the Daily Worker listing a "John Gojack, international vice-president, UERWMA" as initial sponsor of that organization (see *supra*, p. 13).[18]

IV

PETITIONER WAS NOT ENTITLED TO DISMISSAL OF THE INDICTMENT OR A HEARING ON THE BASIS OF BROAD ALLEGATIONS THAT GOVERNMENT EMPLOYEES GENERALLY ARE BIASED

Petitioner contends ~~(Pet. Br. 66)~~ that the indictment should have been dismissed since the grand jury included government employees who were biased against him because of the government's loyalty and

[18] Petitioner does not raise the distinct issue whether the government proved at his trial that "the questions propounded by the congressional committee were in fact 'pertinent to the question under inquiry' by the committee." *Deutch* v. *United States*, 367 U.S. 456, 468. And since this issue was not presented in the petition for certiorari, it is not before the Court. In any event, the evidence which we have relied upon to show that petitioner was apprised of the pertinency of the questions when he appeared before the subcommittee likewise demonstrates that the questions were in fact pertinent to the subject under inquiry. Moreover, the record at the trial included additional evidence showing that the questions were pertinent to the subject under inquiry (see *supra*, 3, 9 at note 5, 10 at note 6, 11 at note 7).

security programs. Alternatively, petitioner claims that he was entitled to a hearing in the district court to allow him to prove bias. We have shown, however, in our brief in *Shelton* v. *United States, supra,* pp. 62–64, that a defendant is not entitled to dismissal of an indictment merely because government employees were on the grand jury. We have also shown in *Shelton,* pp. 64–76, that the defendant is not entitled to a hearing to inquire into the motives and beliefs of grand jurors—even if we assume contrary to the holding of numerous cases that the defendant is sometimes entitled to such a hearing—*only* when he alleges specific and convincing facts of strong bias in individual grand jurors. Here, like in *Shelton* (see our brief in *Shelton,* pp. 77–78), *Liveright* v. *United States,* No. 11, this Term, and *Price* v. *United States,* No. 12, this Term, petitioner's affidavit (R. 5–12), accompanying his Motion to Dismiss the Indictment and for Other Appropriate Relief (R. 4–5), did not state any facts underlying his contention of fear and intimidation among government employees generally resulting from the security program which petitioner would show if a hearing were granted. Similarly, as in *Shelton, Liveright,* and *Price,* petitioner did not allege bias or fear with respect to any individual grand jurors (see our brief in *Shelton,* pp. 76–77). In these circumstances, the trial court properly refused to grant petitioner a hearing to conduct a general exploration of the motives and beliefs of the grand jurors.[19]

[19] While petitioner relies on the contentions made by the petitioner in *Russell* v. *United States,* No. 8, this Term, in that case the petitioner did state some facts which, if proved, would

V

THE INDICTMENT WAS NOT REQUIRED TO SPECIFY THE SUBJECT UNDER INQUIRY OR TO ALLEGE THAT PETITIONER'S REFUSAL TO ANSWER WAS WILFUL

The indictment upon which petitioner was convicted alleged that the questions petitioner refused to answer "were pertinent to the question then under inquiry" and that "the defendant unlawfully refused to answer those pertinent questions" (R. 1). Petitioner claims (Pet. Br. 59–65) that the indictment was invalid because it failed to specify the subject under inquiry when petitioner testified or to allege that his refusal to answer was wilful.

As we have shown in our brief in *Shelton* v. *United States, supra,* pp. 78–83, petitioner's contention that the indictment was required to state the specific subject under inquiry is inconsistent with Rule 7(c) of the Federal Rules of Criminal Procedure and with decisions both of this Court and the courts of appeals. As to petitioner's contention that the indictment was required to state that his refusal to answer was wilful, we have shown in our brief in *Liveright* v. *United States, supra,* pp. 50–51, that it is sufficient if, as here, the indictment alleges that the witness has "unlawfully" refused to answer.

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tend to show that government employees would be biased in cases involving Communism. In *Russell*, however, as in this case, the petitioner was not entitled to a hearing because he did not allege any facts as to the bias of any individual grand jurors. See our brief in *Russell*, pp. 37–38.

CONCLUSION

For the foregoing reasons, we respectfully submit that the judgment of the court of appeals should be affirmed.

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APPENDIX[1]

	Shelton, No. 9		*Russell*, No. 8	
	Senate		House	
	Pet. Br.	Gov. Br.	Pet. Br.	Gov. Br.
I. Authority of the Committee				
1. Enabling resolution is vague	Not raised	Not raised	Not raised	Not raised
2. Subcommittee was not authorized by parent committee	Not raised	Not raised	Not raised	Not raised
3. Committee did not authorize hearing	Not raised	Not raised	57	22–23
4. Subcommittee was not a competent committee	Not raised	Not raised	Not raised	Not raised
5. Subcommittee did not apprise witness of its authority	Not raised	Not raised	Not raised	Not raised
II. Pertinency				
1. Government failed to prove pertinency at trial	58–63	22–24	64–66	32–36
2. Witness failed to object to pertinency before committee	58–63	25–32*	Not raised	Not raised
3. Committee failed to apprise witness of pertinency	58–63	32–41	Not raised	Not raised
III. Constitutional Question				
1. Inquiry violated the witness' First Amendment rights	53–57	48–62*	Not raised	Not raised
2. Committee was not acting pursuant to a valid legislative purpose	Not raised	Not raised	54–55	26–31
3. Committee was acting without probable cause	29–57	41–48,* 50–62*	Not raised	Not raised
IV. Indictment				
1. Indictment was invalid because grand jurors were government employees	64	62–64*	23–41	37–38
2. Defendant was denied a hearing to examine the grand jurors for bias	64	64–78*	40–41	37–38
3. Indictment failed to allege subject under inquiry	63–64	78–83*	41–50	38–39
4. Indictment failed to allege pertinency of questions	Not raised	Not raised	50	38–39
5. Indictment failed to allege authority of subcommittee	Not raised	Not raised	Not raised	Not raised
6. Indictment failed to allege *wilful* refusal to answer	Not raised	Not raised	Not raised	Not raised
7. Witness was indicted and convicted on separate counts for each refusal to answer	Not raised	Not raised	60–64	15–20
V. Trial Procedure				
1. Trial court denied right of cross-examination	Not raised	Not raised	Not raised	Not raised
2. Trial court denied motion to subpoena committee's files	29	59–60	Not raised	Not raised

[1] The government's main arguments, where the issue arises in more than one case, are indicated in this chart by asterisks.

APPENDIX [1]

Shelton, No. 9		*Russell*, No. 8		*Whitman*, No. 10		*Liveright*, No. 11		*Price*, No. 12		*Gojack*, No. 128	
Senate		House		Senate		Senate		Senate		House	
Pet. Br.	Gov. Br.	Pet. Br.	Gov. Br.	Pet. Br.	Gov. Br.	Pet. Br.	Gov. Br.	Pet. Br.	Gov. Br.	Pet. Br.	Gov. Br.
Not raised	Not raised	Not raised	Not raised	47–48	21	34	19–28	34–36	19–22	Not raised	Not raised
Not raised	Not raised	Not raised	Not raised	46–47	21–23	Not raised	Not raised	Not raised	Not raised	Not raised	Not raised
Not raised	Not raised	57	22–23	48–50	23–25	Not raised	Not raised	Not raised	Not raised	Not raised	Not raised
Not raised	Not raised	Not raised	Not raised	Not raised	Not raised	35–42	28–33*	43–44	22–23	Not raised	Not raised
Not raised	Not raised	Not raised	Not raised	50–52	50–51	Not raised	Not raised	Not raised	Not raised	Not raised	Not raised
58–63	22–24	64–66	32–36	20–42	43–50	16–28, 47–48	44–48	22–27	26–31	Not raised	Not raised
58–63	25–32*	Not raised	Not raised	42–46	38–40	28–31	36–37	28–29	24–26	57–58	33–35
58–63	32–41	Not raised	Not raised	42–46	40–43	28–31	37–44	28–29	Not argued	57–58	36–41
53–57	48–62*	Not raised	Not raised	52–58	25–37	35	34–35	37–43	23	42–50	32–33
Not raised	Not raised	51–55	26–31	Not raised	Not raised	Not raised	Not raised	Not raised	Not raised	23–49, 53–56	18–31
29–57	41–48,* 50–62*	Not raised	Not raised	Not raised	Not raised	Not raised	Not raised	20–22	38–41	Not raised	Not raised
64	62–64*	23–41	37–38	Not raised	Not raised	42–47	48–49	44–45	31–32	66	41–42
64	64–78*	40–41	37–38	Not raised	Not raised	46	48–49	44–45	31–32	66	41–42
63–64	78–83*	41–50	38–39	60–63	52–53	16	50	16–18	32–33	59–65	43
Not raised	Not raised	50	38–39	63	53	16	50	18	32–33	Not raised	Not raised
Not raised	Not raised	Not raised	Not raised	63–64	53	16	Not raised	18–19	33–34	Not raised	Not raised
Not raised	Not raised	Not raised	Not raised	Not raised	Not raised	16	50–51*	20	33	65	43
Not raised	Not raised	60–64	15–20	Not raised	Not raised	Not raised	Not raised	Not raised	Not raised	Not raised	Not raised
Not raised	Not raised	Not raised	Not raised	Not raised	Not raised	31–34	55–57	30–34	34–38	Not raised	Not raised
29	59–60	Not raised	Not raised	Not raised	Not raised	31–34	51–55	30–34	34–38	Not raised	Not raised

[1] ated in this chart by asterisks.